

REMARKS

This is a full and timely response to the non-final Office Action of August 10, 2006. Reexamination, reconsideration, and allowance of the application and all presently pending claims are respectfully requested.

Upon entry of this Third Response, claims 1-15 and 17-34 are pending in this application. Claims 1-5, 7, 8, 17-23, 27, 28, and 30-32 are allowed, and claims 33 and 34 are newly added. It is believed that the foregoing amendments add no new matter to the present application.

Response to §101 Rejections

Claims 6, 9-15, 24-26, and 29 presently stand rejected under 35 U.S.C. §101 as being directed to inventions that allegedly do not produce useful, concrete, and tangible results. Applicants respectfully assert that claims 6, 9-15, 24-26, and 29 are directed to statutory subject matter and, therefore, satisfy the requirements of 35 U.S.C. §101.

In this regard, inventions that are directed *solely* to “abstract ideas, laws of nature and natural phenomena” do not satisfy 35 U.S.C. §101 and are, therefore, not patentable. See M.P.E.P. 2106(IV)(A). Further, whether or not subject matter is directed solely to abstract ideas turns on whether the subject matter has a “practical application.” In this regard, a claim is directed to a “practical application” and, therefore, satisfies 35 U.S.C. §101 if it can be shown that: (1) the “claimed invention ‘transforms’ an article or physical object to a different state or thing” or (2) the “claimed invention otherwise produces a useful, concrete and tangible result.” See USPTO OG Notices: 22 November 2005 Sec. (IV)(C)(2). Notably, a claim can be statutory even if it contains some limitations that are directed to abstract ideas. “Indeed, because the dispositive inquiry is whether the claim *as a whole* is directed to statutory subject matter, it

is irrelevant that a claim may contain, as part of the whole, subject matter which would not be patentable by itself.” *In re Alappat*, 33 F.3d 1526, 1543, 31 U.S.P.Q.2d 1545 (Fed. Cir. 1994) (emphasis in original). Further, although a claim may be directed to more than one practical application, “only one is necessary.” See USPTO OG Notices: 22 November 2005 Sec. (II)(A). Moreover, when all of the elements of claim 6 and 9 are properly considered as a whole, it is readily apparent that each of the claims 6 and 9 is not directed *solely* to mere abstract ideas but is instead directed to at least one “practical application” that “transforms” an article or physical object to a different state or thing” and/or produces a “useful, concrete and tangible result.”

As an example, claim 6 recites “selecting an application module adapted for monitoring the performance of one or more data links” and “stacking the front module, application, module, and back module in sequence and electrically connecting and mechanically securing the modules.” Applicants submit that the “stacking” and “electrically connecting” described by claim 6 “(transform) an article or physical object to a different state or thing,” and claim 6 is statutory for at least this reason.

Further, the “stacking” and “electrically connecting” change the physical configuration of the “test unit” so that the “test unit” can operate using the “application module” selected in the “selecting” step. Such a result is clearly “useful, concrete and tangible,” and claim 6 is directed to more than just abstract ideas. In addition, claim 6 recites “providing electrical power from the power source of the back module to the application module.” Moreover, powering the “application module” is a result that is “useful, concrete and tangible.” Thus, claim 6 has several different practical applications, any one of which is sufficient for satisfying 35 U.S.C. §101.

In addition, claim 9 recites “stacking and latching one or more additional application modules to the first application module.” Such “stacking and latching,” similar to the

“stacking” and “electrically connecting” described above for claim 6, “(transform) an article or physical object to a different state or thing.” Further, claim 9 also recites “moving an adjustment rod to different slots of the slotted retainer *such that an orientation of the test apparatus is changed.*” (Emphasis added). Such a step also “transforms’ an article or physical object to a different state or thing.” Moreover, it is clear that the elements recited by claim 9 “(transform) an article or physical object to a different state or thing,” and claim 9 is statutory for at least this reason.

Further, the “stacking and latching” of claim 9 changes the physical configuration of the “test apparatus” so that the “test apparatus” can operate using the “additional application modules.” In addition, the “moving” step changes the “orientation” of the test apparatus, which can be useful for enabling better viewing of the test results. Such results are clearly “useful, concrete and tangible.” Accordingly, for at least the reasons set forth above, Applicants submit that claim 9 has several different practical applications, any one of which is sufficient for satisfying 35 U.S.C. §101.

Therefore, Applicants respectfully submit that claims 6 and 9 satisfy the requirements of 35 U.S.C. §101, and the rejections of these claims should be withdrawn. Furthermore, claims 10-15, 24-26, and 29 depend from a respective one of the independent claims 6 or 9. Since claims 6 and 9 should be allowed as argued hereinabove, pending dependent claims 10-15, 24-26, and 29 should be allowed as a matter of law for at least this reason. *In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

Claims 33 and 34

Claims 33 and 34 have been newly added via the amendments set forth herein. Applicants submit that the pending dependent claims 33 and 34 depend from a respective one of the independent claims 6 or 9. Since claims 6 and 9 should be allowed as argued hereinabove, pending dependent claims 10-15, 24-26, and 29 should be allowed as a matter of law for at least this reason. *In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

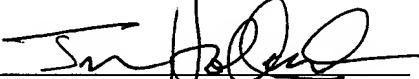
CONCLUSION

Applicants respectfully request that all outstanding objections and rejections be withdrawn and that this application and all presently pending claims be allowed to issue. If the Examiner has any questions or comments regarding Applicants' response, the Examiner is encouraged to telephone Applicants' undersigned counsel.

Respectfully submitted,

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